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SEP 17
CHARLES ELMO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 232

THE HOME INSURANCE COMPANY and FRANKLIN FIRE INSURANCE COMPANY,
Appellants,

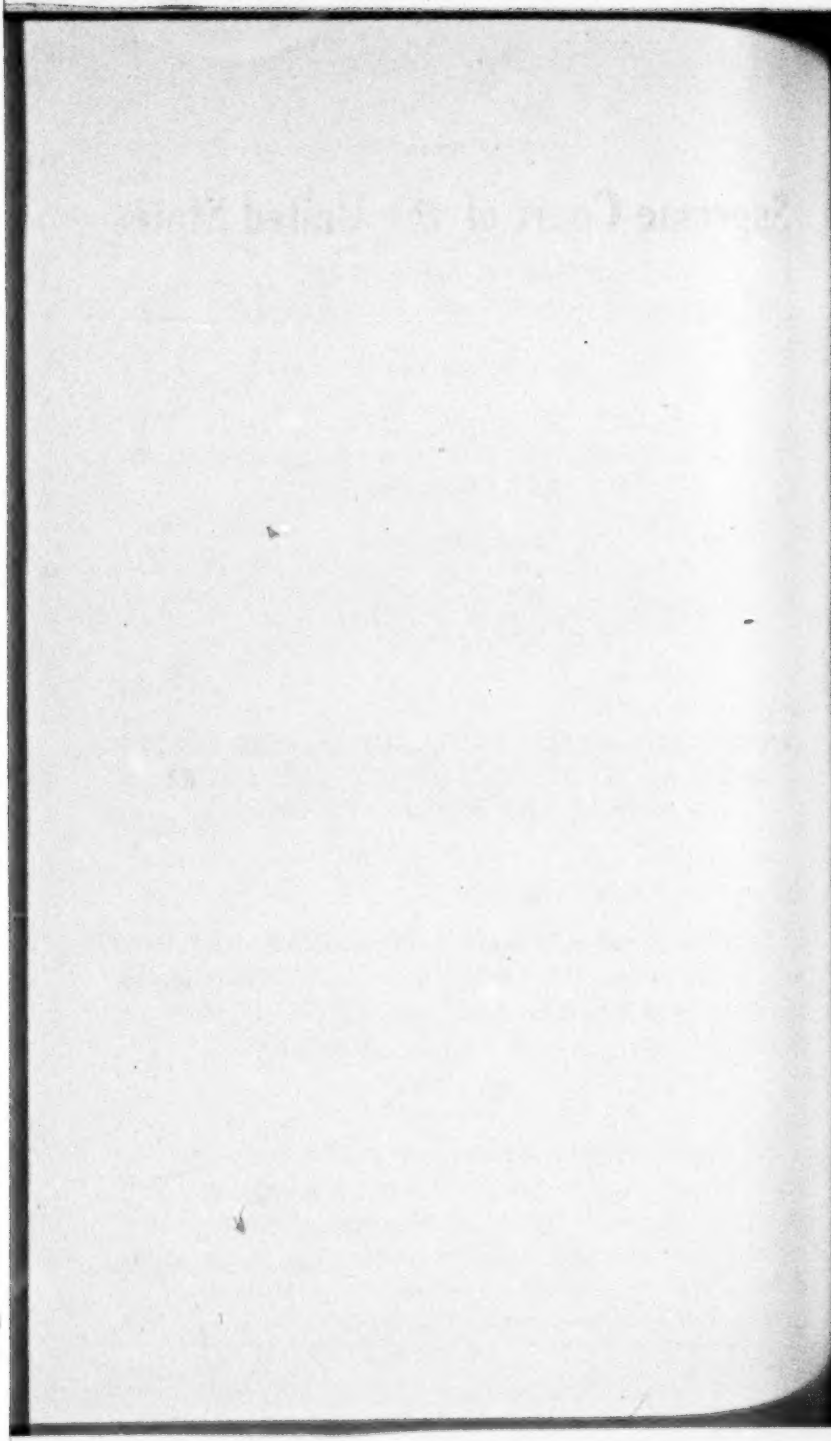
vs.

C. J. DICK, TEXAS AND GULF STEAMSHIP COMPANY and SUDERMAN & YOUNG, INC.,
Appellees.

ANSWER OF APPELLEES TO APPELLANTS' STATEMENT AS TO JURISDICTION OF THIS COURT ON APPEAL AND MOTION TO DISMISS.

H. C. HUGHES,
JOHN NEETHE,
Counsel for Appellees.

KNAPP BROS., STATIONERS & PRINT., GALV



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ANSWER OF APPELLEES TO APPELLANTS' STATEMENT AS TO JURISDICTION OF THIS COURT ON APPEAL AND MOTION TO DISMISS.

MAY IT PLEASE THE COURT:

Appellees hereby present their answer to the statement as to jurisdiction of this court heretofore made by appellants and in conjunction therewith present their motion to dismiss this appeal for want of jurisdiction.

A.

We accept as substantially correct the facts cited by appellants to support jurisdiction; but add only, that it is shown by the record that C. J. Dick was at all times during this controversy a resident and citizen of the State of Texas and temporarily absent in Mexico at the time the liability herein urged arose. The record also shows that

the American reinsurance corporations had permits to do business in the State of Texas and had local agents in that State.

Replying to appellants' statement, appellees respectfully suggest that this court has no power to consider this case for the following reasons:

B.

Two Federal questions only were attempted to be raised in the courts below. These were:

(1) That Article 5545 of the Revised Statutes of the State of Texas (1925), set out in appellants statement, as applied to the contract of insurance sued on is unconstitutional and in violation of Article 1, section 10, clause one of the Federal Constitution.

(2) Did application of said statute deprive appellants of their property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution?

These questions were raised by five different assignments of error, all being to the same purport, however. (Rec. 248). No other federal question was suggested or assigned in the lower courts, and, therefore, no other will be considered by this court: Chapin vs. Fye, 179 U. S. 126, 45 L. Ed. 119.

The present statute allowing appeals gives such rights only in the Supreme Court as "heretofore could have been obtained by writs of error." It has always been necessary that a substantial federal question be involved in a case from the state court to give this court jurisdiction and such question must have been urged and passed upon by the courts below and assigned as error:

Sawyer vs. Piper, 189 U. S. 154; 47 L. Ed. 157;

Equitable Life Assurance Society vs. Brown 187 U. S. 311; 47 L. Ed. 190.

The court will, therefore, have to pass upon whether any federal questions are involved or, if any, whether insofar as urged, they are without substance and wholly frivolous.

C.

ON IMPAIRING OBLIGATION OF CONTRACT:

(1) This section of the Constitution refers only to legislation enacted subsequent to the making of the contract in litigation.

Cross Lake Shooting & F. Club vs. Louisiana, 224 U. S. 633; 56 L. Ed. 924.

Munday vs. Wisconsin T. Co., 252 U. S. 501; 64 L. Ed. 684;

Detroit United Railway vs. Detroit, 242 U. S. 238; 61 L. Ed. 268.

(2) Section 5545 of the Revised Statutes of Texas was enacted in 1891. The contracts here in question were made long after, and are, therefore, not affected by the constitutional provision denying the states the right to pass laws impairing the obligation of contracts. The statute is an integral part of the public policy of the state in reference to how litigation within its courts shall be conducted, and the policy of the state so enacted is not a federal question, and certainly not in reference to remedies given by a state to litigants:

Bond vs. Hume, 243 U. S. 21, 61 L. Ed. 569;

Tarver vs. Keach, 15 Wall. 67, 21 L. Ed. 82;

Railway Company vs. Wiggins Ferry Co., 119 U. S. 615; 30 L. Ed. 523;

Railway Co. vs. Plainview, 143 U. S. 371; 36 L. Ed. 200;

Delmas vs. Insurance Co., 14 Wall 661, 20 L. Ed. 757;

Union Trust Co. vs. Grosman, 245 U. S. 415, 62 L. Ed. 368;

The Kensington, 183 U. S. 263;

Bothwell vs. Buckbee Mears & Co., 275 U. S. 273, 72 L. Ed. 277.

(3) The obligation of a contract is not impaired by a change in the remedy as long as an adequate remedy or defense is saved to the litigant.

Campbell vs. Holt, 115 U. S. 620; 29 L. Ed. 483;

Bank vs. Franklyn, 120 U. S. 747; 30 L. Ed. 828;

Tennessee vs. Sneed, 96 U. S. 69; 24 L. Ed. 610;

Pittsburgh Steel Company vs. Baltimore Equitable Society, 226 U. S. 457; 57 L. Ed. 299;

Antoni vs. Greenhow, 107 U. S. 669; 27 L. Ed. 468;

McCullough vs. Virginia, 172 U. S. 123; 43 L. Ed. 390;

Bank of the United States vs. Donnally, 8 Peters 361; 8 L. Ed. 974;

McElmoyle vs. Cohen, 13 Peters 327.

D.

ON DUE PROCESS OF LAW:

This case was filed, due service by publication made on the Mexican Company, the appellants, garnishees, were duly served by lawful process on local agents who transacted their business within the state and appeared generally. They defended the cause of action against them and judgment was rendered in favor of appellees against appellants as garnishees, they being found indebted to the Mexican Company. This is clearly due process of law.

New Orleans Water Works Co. vs. Louisiana, 185 U. S. 346; 46 L. Ed. 943;

Con. Rendering Co. vs. Vermont, 207 U. S. 550; 52 L. Ed. 335.

Due process does not control practice in state courts.

Railway Co. vs. Schmidt, 177 U. S. 230; 44 L. Ed. 750;
Railway Co. vs. Iowa, 160 U. S. 467; 40 L. Ed. 469.

E.

In rendering judgment in this case, the state courts simply followed the public policy of the state as set forth in its statutes and the decision of its highest court construing such statute. This in truth was the basis of the decision herein and the determination of the so called federal questions were not necessary to a decision herein. The judgment of the state court is fully supported upon grounds other than federal, and therefore no federal question is involved.

Bacon vs. Texas, 163 U. S. 207; 41 L. Ed. 132;

Building Association vs. Brahan, 193 U. S. 635; 48 L. Ed. 823;

Enterprise Irrigation District vs. Farmers Mutual Canal Co., 243 U. S. 162; 61 L. Ed. 648;

Leathe vs. Thomas, 207 U. S. 99; 52 L. Ed. 120;

Arkansas So. Ry. Co. vs. German Nat'l Bank, 207 U. S. 273; 52 L. Ed. 201.

In conclusion we would say that we have examined the decisions cited by appellants upon which they rely to sustain jurisdiction in this court and respectfully suggest that the facts in them are so dissimilar to the facts in the case at bar that their citations seem to have no relevancy whatever.

Kansas City So. Ry. vs. Road Imp. Dist. No. 6, 256 U. S. 659-660, is a tax case in which the railroad corporation was taxed so inordinately as to deprive it of equal protection of the law. Dahnke-Walker Co. vs. Bondurant, 257 U. S. 282, 287, 290, determines that the transaction in question is interstate commerce and that therefore a state statute attempting to burden such interstate commerce is invalid.

Aetna Life Insurance Co. vs. Dunken, 266 U. S. 390-405, is in reference to a policy of life insurance. On this, avowedly a Tennessee contract, the state courts endeavored to impress a subsequently passed penal statute of Texas providing for 12% damages and attorney's fees, and it was most logically held that by such subsequent legislation an additional burden on the life insurance company ought not to be enforced in connection with a policy duly issued under the statutes then in force in Tennessee. The full faith and credit clause of the constitution was involved.

Fiske vs. Kansas, 274 U. S. 380, 385, rules naught more than that a statute of Kansas prohibiting syndicalism is unconstitutional for lack of due process as against the appellant in that case for total want of criminality in the matters charged against him.

Millsaps College vs. City of Jackson, 275 U. S. 129, 132, is a tax case and simply affirms the doctrine that this court will follow the construction of the highest state court in reference to matters of taxation.

Saltonstall vs. Saltonstall and others, 276 U. S. 260, is also a tax question under a state inheritance tax law and reiterates the doctrine of the foreging case—that this court will follow the state court as far as may be in the construction of such statute.

We respectfully submit that a contract made in a foreign country is not entitled to the protection of the Constitution of the United States any more than is the legislation of such foreign country or a judgment obtained therein. When a litigant claims rights under a foreign contract and when brought into courts of the United States or any of the states he is entitled to due process of course; but as to the remedies on such contract they are controlled by the public policy of the forum where the suit is brought.

Aetna Life Insurance Co. vs. Tremblay, 223 U. S. 185, 56 L. Ed. 398.

League vs. Young, 11 How. 185; 13 L. Ed. 657; 6 R. C. L. 323.

Appellees respectfully urge that this cause should be dismissed.

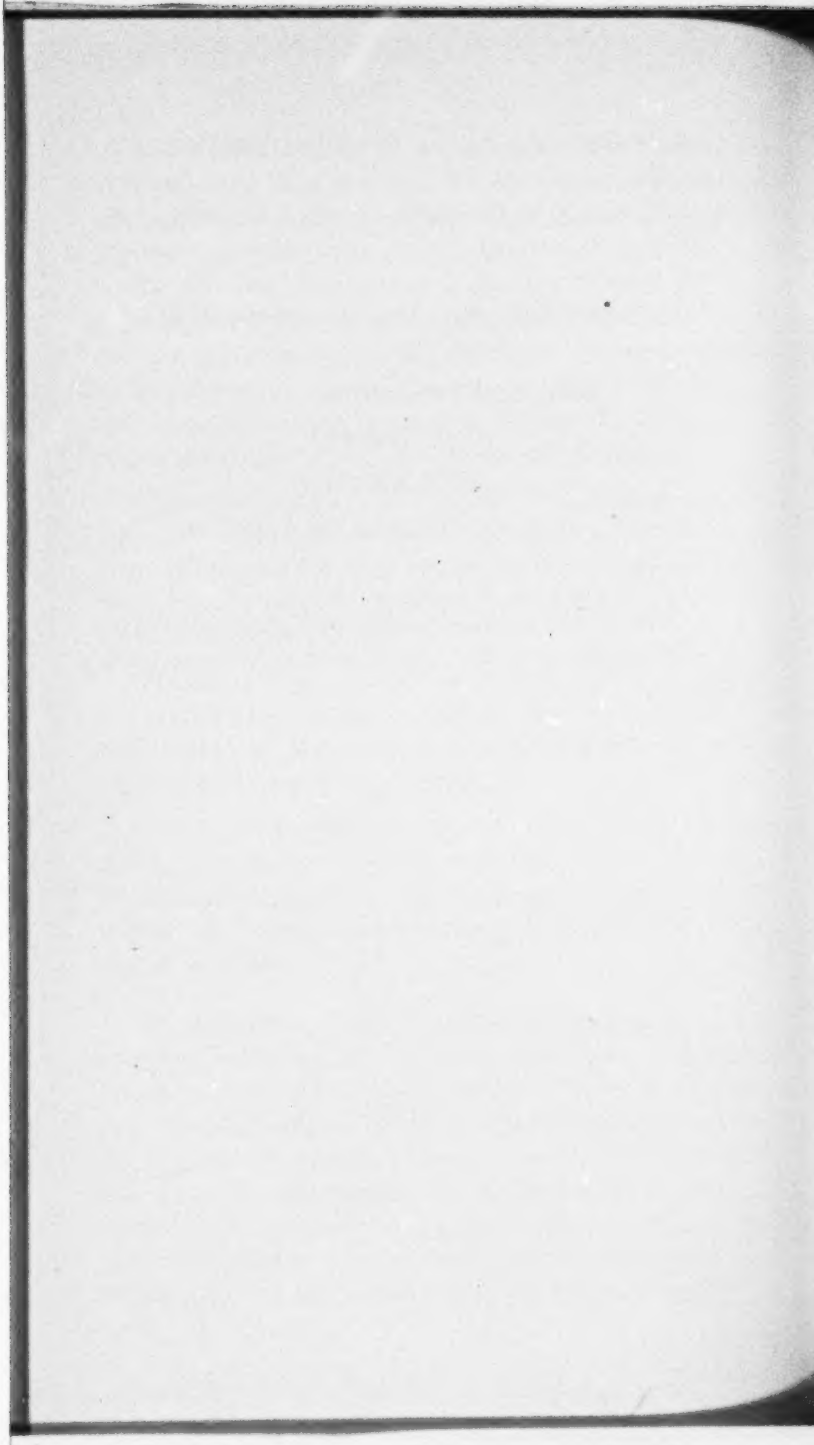
Respectfully submitted,

H. C. HUGHES,

JOHN NEETHE,

Counsel for Appellees.

Note: The record to which references may have been made in the foregoing is the same record as the one used by appellants.



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SEP 28

CHARLES ELMO

IN THE

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OCTOBER TERM, 1929.

No. 232

THE HOME INSURANCE COMPANY and FRANKLIN FIRE INSURANCE COMPANY,

Petitioners,

vs.

C. J. DICK, TEXAS AND GULF STEAMSHIP COMPANY and SUDERMAN & YOUNG, INC.,

Respondents.

Answer to Petition for Writ of Certiorari.

H. C. HUGHES,
JOHN NEETHE,
JOHN L. DARROUZET,
Counsel for Respondents.

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Answer to Petition for Writ of Certiorari.

MAY IT PLEASE THE COURT:

We respectfully submit to the Court that long before it should consider this petition it ought to dispose of the "Statement of the Points showing Jurisdiction" of this case in this Court made by the appellants and the answer filed by us. And in connection with these we know it will consider our motion to dismiss on the ground that no federal question is involved, that the bringing in of this federal question is wholly incidental and that the judgment of the State court rests on the grounds wholly non-federal.

In answer to the petition for writ of certiorari respondents say that in presenting the petition herein the petitioners seem to have lost sight of the fact that this is

a case from a State Court wherein the public policy of Texas is determined. The petitioners now seek to bring into this case purely non-federal questions not heretofore assigned in the lower courts. (Rec. 248).

> "It is the peculiar province and privilege of the state courts to construe their own statutes; and it is no part of the functions of this court to review their decision, or assume jurisdiction over them on the pretense that their judgments have impaired the obligation of contracts. The power delegated to us is for the restraint of unconstitutional legislation by the states, and not for the correction of alleged errors committed by their judiciary. * * *
>
> The State Court * * * may hold a contract void which, in our opinion, is valid; it may adjudge a contract to be valid which, in our opinion, is void; or its interpretation of the contract may, in our opinion, be radically wrong,"

yet this court holds it has no jurisdiction unless a federal question is involved. Central Land Co. v. Laidley, 159 U. S. 103-112, 40 L. Ed. 91. We will not repeat what has been said in the "Answer of Appellee to Appellant's Statement as to Jurisdiction and Motion to Dismiss," as we think that all of the matters set up therein are more fully applicable to this Petition for Certiorari.

Ever since the early case of Hawkins vs. Barney, 5 Pet. 457, it has been held that "laws limiting the time of bringing suit constitute a part of the lex fori of every country. There are laws of administering justice—one of the most sacred and important of sovereign rights and duties."

Article 5545 of the Revised Civil Statutes of Texas quoted is the statement of the public policy of Texas on the subject of agreed limitations and is binding on the Texas courts as to all causes of action that come within the jurisdiction of Texas tribunals. The holding of the Texas Court in this case is not a new or fanciful departure from the regular course of a settled line of decisions. The

rule here applied prevails in Alabama, Galliher vs. State Mutual Life Insurance Company, 150 Ala. 543, 124 Am. St. Reports 83; in Virginia, Smith vs. Northen Neck Mt. Fire Association, 112 Va. 192, 70 S. E. 482, 38 L. R. A. N. S. 1019; in Kansas, Hornick vs. First Catholic Slovac Union, 115 Kan. 597, 224 Pac. 486. In the latter case 7 Cooley's brief on the law of Insurance, 1673, and 5 Joyce on Insurance, par. 3224, are both cited as sustaining the rule followed in this case. And in New York in South and Central American Commercial Company vs. Panama R. Co., 237 N. Y. 287, 142 N .E. 666, the New York Court of Appeals holds that short stipulations in foreign bills of lading are void in that State though valid where made. The rule is also sustained in 14 Ruling Case Law, 1418, par. 580, and in 13 C. J. 260. Not only have many States passed such legislation evidencing their public policy but Congress has seen fit to enact a similar statute with respect to clauses in bills of lading in respect to the time for filing suits against transportation and railway companies engaged in interstate commerce. 49 U. S. C. A. page 75, Sec. 20, par. 11.

The law in Texas was the same as in the Riddlesbarger case until after the enactment of Article 5545 which changed the public policy of the State on such subject. The state cases cited by petitioners simply show the public policy of each particular state. They are not relevant when it comes to fix the public policy of Texas. That is a matter solely for the Texas courts, particularly when they construe a Texas statute. As above stated there is a great distinction between the facts of those cases and ours. In Kentucky there is no statute similar to the one in Texas. In North Dakota the agreed limitation had the effect of extinguishing the debt while the parties and cause of action were subject to the jurisdiction of the State where the policy was issued.

The rule as to the rights between the original insurer and the reinsurer was not first laid down in the Supreme Court of the United States in the Allemannia case cited in the petition herein. This decision but followed a long line of State decisions. This case, Allemannia Fire Insurance Company vs. Firemen's Insurance Company, 209 U. S. 326, 52 L. Ed. 815, has been followed recently by this Court in Hicks vs. Poe, 269 U. S. 118, 121, 70 L. Ed. 187, where this Court specifically says that such questions are not federal in their nature.

It would be hard for us to believe that this court would overrule what has been said and approved so forcibly in Chicago R. I. & P. Ry. Co. vs. Sturm, 174 U. S. 710, 43 L. Ed. 1144, and in King vs. Cross, 175 U. S. 399, 44 L. Ed. 213, with respect to the situs of a debt and as to the right of the creditors residing in one State, to issue garnishments on indebtedness belonging to non-residents, and to foreclose upon same through the regular course of procedure in the State courts. Such procedure was held to be "due process of law," in spite of the fact that in the Sturm case no recovery could have been had in the domicile of the non-resident defendant because the money was exempt.

The petitioner refers to the case of Morris vs. Scandinavia Insurance Co., wherein it is stated that there is no privity between the insured and the reinsurer. This lack of privity was the very reason that suit was not brought directly against the reinsurers but was brought against the Mexican Company and the reinsurance companies brought in by garnishment. The fund found due from the reinsurers to the original insurer was foreclosed on. This is a remedy allowed by the state law of Texas and on this no federal question is involved. We know of no reason, and petitioners have pointed out none, why reinsurance companies should have any special privilege and not be subject to garnishment proceeding with respect

to debts due by them to others. Certainly there is no inhibition in the constitution on this subject.

There has never been any real effort to show that the petitioners owed nothing on their reinsurance contracts, but only a determined effort to escape by highly technical defenses which were all overruled by the State courts after full hearing.

WHEREFORE, respondents pray that said petition be dismissed for want of jurisdiction or in the alternative that the same be denied.

H. C. HUGHES,
JOHN NEETHE,
JOHN L. DARROUZET,

Counsel for Respondents.